

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Ethical Standards of Practice

Sections Affected: Title 16, Division 39, California Code of Regulations, Section 4170.

SPECIFIC PURPOSE OF THE REGULATIONS:

The specific purpose of the proposed regulations is to amend California Code of Regulations section 4170(g) to replace the term “unprofessional conduct” with the phrase “grounds for discipline,” which would broaden the reportable violations to include all subsections listed in Business and Professions Code (BPC) section 2570.28.

FACTUAL BASIS/NECESSITY:

Current law states that a violation of any ethical standard of practice constitutes grounds for disciplinary action. The ethical standards of practice are outlined in Section 4170 and include subsection (g) requiring that occupational therapy practitioners report known acts of “unprofessional conduct” by other practitioners to the Board.

The proposed language amends 4170(g) to require that occupational therapy practitioners report to the Board “acts constituting grounds for discipline” as defined in Business and Professions Code (BPC) Section 2570.28. Currently, 4170(g) only requires that practitioners report “unprofessional conduct” to the Board. BPC section 2570.28(a) narrowly defines “unprofessional conduct” as: (1) incompetence or gross negligence, (2) repeated similar negligent acts, (3) a conviction of practicing medicine without a license, (4) the use of advertising that violates Section 17500, and (5) disciplinary action taken by another state. Using the phrase “acts constituting grounds for discipline” in lieu of “unprofessional conduct” would broaden the reportable violations to more appropriately include all subsections listed in BPC section 2570.28. Additional violations that occupational therapy practitioners would be required to report to the Board would include, but not be limited to, impersonating a licensed practitioner, allowing another person to use a license, committing fraudulent acts, committing any action punishable as a sexually related crime, using excessive force upon a patient, falsifying a patient record, and failing to maintain patient confidentiality.

The Board relies heavily on information provided by occupational therapy practitioners in order to investigate potential violations of the law by other licensees. In addition to filing complaints directly, practitioners are often the primary source of evidence needed to take appropriate action against licensees who have violated the law. For example, supervising occupational therapists are usually the primary source of documentation needed to substantiate unlicensed practice by the therapists and assistants they supervise. Although, ethically obligated to cooperate with Board investigations, practitioners do not always readily supply the information requested by the Board.

Currently, the Board has no recourse when a practitioner does not provide the necessary information in such cases. Broadening the list of violations that practitioners are obligated to report will assist the Board in obtaining the vital documentation needed to take appropriate action against licensees who violate the Occupational Therapy Practice Act.

UNDERLYING DATA:

None.

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business. The proposed regulations will only affect licensees, certificate holders or unlicensed persons.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.